No. 18-18

In the Supreme Court of the United States

Maryland-National Capital Park and Planning Commission,

Petitioner,

v.

American Humanist Association, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF AMICUS CURIAE OF PRINCE GEORGE'S COUNTY, MARYLAND IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Prince George's County, Maryland is the County in Maryland wherein the subject of this litigation, the "Peace Cross", is situated. Prince George's County was founded in 1696 and as such its citizens have served in every United States war, foreign and domestic. Because many of its citizens, both past and present, are veterans, and because the cross has stood as a landmark in the County for more than one quarter of its history and solely as a World War I memorial, Prince George's County has an interest in the preservation of the Peace Cross at its current location.

SUMMARY OF ARGUMENT

The County disagrees with the Fourth Circuit's opinion that the Commission's display and maintenance of the Peace Cross violates the Establishment Clause. In finding that the Peace

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[1] Pursuant to Sup. Ct. R. 37.6, *amicus curiae* and its counsel state that none of the parties to this case nor their counsel authored this brief in whole or in part, and that no person or entity made a monetary contribution for the preparation or submission of this brief. Because Prince George's County is a "county" within the meaning of Rule 37.4 this brief is being submitted without notice to, or with the permission of, the appellees.

Cross's sectarian elements outweigh the secular elements, the Fourth Circuit placed excessive weight on the Peace Cross's association with Christianity and "immense size" while understating the overwhelming evidence of its 93-year history as a war memorial in the County. The cross was erected as understood to be a symbol of peace and a memorial to fallen veterans of World War I, and has stood purely as a war memorial since 1925. The Peace Cross has never been used for religious services.

ARGUMENT

In its opinion, the Fourth Circuit Court of Appeals placed great weight on the size of the Peace Cross and the cross's traditional association with Christianity in its holding that the cross violated the Establishment Clause of the First Amendment. *Am Humanist Ass'n v. Maryland-National Capital Park & Planning, Comm'n*, 874 F.3d 195, 209 (4th Cir. 2017) (claiming that the "immense size and prominence" of the Cross aggrandizes and universalizes religion). Neither of these concerns should override the secular history and common understanding of the cross in Prince George's County. *Id.* at 218-19 (Gregory, C.J., dissenting) (explaining that the secular elements – the plaque specifically dedicating the Cross to County veterans, the American Legion symbol, the inscription "valor, endurance, courage, and devotion"; the 90-year

history as a war memorial; and its presence among other secular war monuments – would all lead a reasonable observer to see the Peace Cross as a war memorial). As noted by this Court, the *Establishment Clause* "does not oblige government to avoid any public acknowledgement of religion's role in society". *Salazar v. Buono*, 559 U.S. 700, 718-19 (2010) (plurality opinion).

The Fourth Circuit failed to appreciate the history of using crosses to commemorate servicemen. This is readily apparent when one examines the use of crosses in association with fallen U.S. soldiers: in the fields of American military cemeteries in Europe there are white crosses as far as the eye can see. In one field, the Meuse-Argonne Cemetery in France which consists of 130 acres, 14,246 white crosses mark the graves of American soldiers who lost their lives in World War I. *See* American Battle Monuments Commission @ https://www.abmc.gov/cemeteries-memorials/europe/meuse-argonne-american-cemetery#.W0dd4tiWyUk. This reflects the cross's history as a soldier's commemorative headstone.[2] The expansive display of crosses in these

[2] A readily apparent irony in this litigation is that the deceased Prince George's County soldiers identified on the Peace Cross placard and those buried in the European cemeteries died, in part, to preserve the right of the appellees to complain about the very crosses that adorn their graves.

cemeteries dwarfs the single cross at issue in this case. The United States Army (and the United States Air Force before 1960) also uses the form of a cross in its second-highest award, the Distinguished Service Medal. *See* http://military. wikia.com/wiki/ Distinguished_Service_Cross_(United_States). The Fourth Circuit's opinion essentially ignores this significant history. Crosses historically used as war memorials should not now be held unconstitutional because their historical origins and intended meaning have been forgotten.

Further, as noted in the petitions of the parties, the site of the Peace Cross has never been used for religious purposes or understood by Prince George's County citizens as a religious symbol. It stood without challenge in Prince George's County for almost 100 years until the instant non-resident, interest group targeted it for purely ideological reasons. https://americanhumanist.org/about/ (The mission of the American Humanist Association is "to bring about a progressive society where being good without a god is an accepted and respected way to live life.") (emphasis added). The community value of paying tribute to war veterans should not be eradicated at the behest of an anti-religious group who claim offense at the monuments' use of religious symbolism for secular ends. That the cross is a symbol of Christianity does not mean that it cannot also hold other meanings that overshadow that symbolism. *Buono*, 559 U.S. at 721 ("But a Latin cross is not merely a reaffirmation of Christian

beliefs. It is a symbol often used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people.").

If the Peace Cross offended bona fide residents of the County certainly the appellees would have found them and included them as parties to this action.[3] They did not. This is illustrative of how the Peace Cross has always been viewed by residents of the County as secular, i.e., a war memorial and not as a government endorsement of religion. *See Van Orden v. Perry*, 545 U.S. 677, 702 (2005) (concluding that a monument going unchallenged for 40 years was the determinative factor indicating that it conveyed a secular message).

This Court is "normally deferential" to "articulations of a secular purpose," so long as they

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[3] Conspicuously absent from the complaint filed in this action are the addresses of the individual plaintiffs. Plaintiff Lowe concedes that he is a resident of Washington, DC. Plaintiff McNeill alleged that he was a resident of the County but his driver's license and principal place of residence is in North Carolina. It is clear that McNeill no longer lives in Prince George's County or even in the State of Maryland. Like Lowe, McNeill is a member of the American Humanist Society. Frederick Edwards is also a member of the Humanist Society and the "Freedom From Religion Foundation". His ties to the immediate community appear to be dubious at best.

are "sincere and not a sham." *Edwards v. Aguillard*, 482 U.S. 578, 586-587, 96 L. Ed. 2d 510, 107 S. Ct. 2573 (1987). There is no evidence of insincerity in this case, and thus no justification for the Fourth Circuit's unwillingness to fully credit the Peace Cross's stated purpose. That the monument bears a religious symbol as well as a secular one does not alter the analysis. In determining whether a secular purpose exists, this Court has simply required that the display not be "motivated wholly by religious considerations." *Lynch v. Donnelly*, 465 U.S. 668, 680, 79 L. Ed. 2d 604, 104 S. Ct. 1355 (1984). It is clear from the record in this case that the Peace Cross was not erected by wholly religious considerations. The fact that the monument uses symbolism that can also have religious meaning does not cast doubt on the government's valid secular purposes for its display or the common understanding of the monument by Prince George's County residents.

CONCLUSION

The Fourth Circuit erred by basing its opinion almost entirely on the size of the Peace Cross and the cross's association with Christianity. The Peace Cross has long been a landmark in Prince George's County and understood by its residents as a predominantly secular symbol of peace and as a memorial to local fallen war veterans. That the cross, as a symbol, is also associated with Christianity

should be of no moment as the record in this case establishes without challenge that the history, understanding and use of the Peace Cross in Prince George's County has been secular. This Court should grant the parties' petitions for writ of certiorari to decide the extent to which the secular history, use and understanding of a religious symbol may defeat an establishment clause challenge.

Respectfully submitted,

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